

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6427

BILL NUMBER: HB 1099

NOTE PREPARED: Mar 22, 2006

BILL AMENDED: Mar 14, 2006

SUBJECT: Fireworks Sales and Discharge.

FIRST AUTHOR: Rep. Frizzell

FIRST SPONSOR: Sen. Weatherwax

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Use of Fireworks:* The bill renames common fireworks as consumer fireworks. It authorizes the use of consumer fireworks on the property of the purchaser, on the property of another who has given permission for the use, and at special discharge locations. The bill revises the definition of resident wholesaler, importer, or distributor under certain circumstances and revises language related to the quantity of certain fireworks that may be sold from a Class 1 structure. It establishes requirements for the tent or structure in which consumer fireworks may be sold. It specifies that certain fireworks may not be sold from or stored at a temporary stand. It revises language related to the transferability of a certificate of compliance issued to a retailer of consumer fireworks or to other dealers of fireworks and sets times during the day when a person may use certain fireworks.

Fire Prevention and Building Safety Commission: The bill requires the commission to adopt rules and interim guidelines concerning supervised public displays of fireworks. The commission may adopt rules specifying the conditions under which certain fire chiefs may grant a permit to a person to sponsor a special fireworks discharge location.

Registration Fees: The bill establishes annual registration fees for the retail sale of fireworks. It removes the requirement that a purchaser of consumer fireworks provide a written assurance that the consumer fireworks will be shipped out of Indiana within five days of purchase.

Penalties: The bill establishes various penalties for (1) the ignition, discharge, sale, possession, and use of certain fireworks under certain conditions. It revises language relating to the possession of a firework by a minor or the sale of a firework to a minor. It specifies that a child commits a delinquent act if the child commits

certain fireworks violations.

Public Safety Fee: The bill establishes a Public Safety Fee of 5% on the retail sale of fireworks. It provides that the fee is to be collected by the Department of State Revenue (DOR) and deposited in the state General Fund.

Appropriation of Fees to the Department of Homeland Security (DHS): The bill makes an appropriation to the DHS for certain disaster-related costs under certain circumstances.

State Department of Health: A practitioner who initially treats a person for an injury resulting from fireworks or pyrotechnics must report the case to the State Department of Health.

Technical Corrections: The bill makes technical corrections related to an unnecessary definition, another definition, to internal cross-references, a criminal penalty, and certain sales of fireworks, and concerning mens rea.

Effective Date: Upon passage; May 1, 2006; June 1, 2006.

Explanation of State Expenditures: *Fire Prevention and Building Safety Commission:* The commission must adopt interim guidelines and subsequent rules concerning fireworks and the distribution of the Public Safety Fee revenue. The Department of Fire and Building Safety, which staffs the commission, should be able to assist in the adoption of rules by the commission given the level of its existing budget.

Public Safety Fee: Revenue from the fee may be used to provide funds for disaster relief and training programs.

State Department of Health: Under current law, the State Data Center of the State Department of Health received information from practitioners concerning injuries identified as resulting from fireworks or pyrotechnics. The State Department of Health was required to provide a report to the General Assembly not later than December 31, 2004. This section, IC 35-47-7-6, expired on January 1, 2005.

Under the bill, this expired section would be repealed and the State Department of Health would be required to report annually to the Legislative Council on information collected in writing from practitioners, hospitals, and outpatient surgical centers. Administrative costs to collect data and produce a report will become annual costs under the bill and could increase over the previously provided report to the extent that hospitals and outpatient surgical centers are added. However, any increase in cost is expected to be minimal and will depend on the administrative actions of the State Department of Health.

State Fire Marshal (SFM): The SFM must collect annual registration fees and deposit the fees in the Fire and Building Services Fund. The SFM must also issue certificates of compliance. These provisions will add administrative expenses to the SFM. The specific impact is indeterminable. However, expenses would be offset by the collection of fees.

The SFM or staff member must inspect tents and structures in which common fireworks are sold. The SFM may delegate this responsibility to a responding fire department with jurisdiction over the tent or structure. The SFM is no longer required to provide signs to interstate wholesalers. The SFM should be able to accomplish the inspections given the existing level of resources.

DOR to Adopt Rules: The DOR must adopt interim guidelines and subsequent rules to implement the Public Safety Fee collections. The DOR should be able to accomplish this task given its existing level of resources.

Appropriation of Fees to the DHS: The DHS must report to the Budget Committee by July 1, 2006, on the feasibility of creating a regional training program and establishing a state disaster relief fund to pay for damages resulting from a disaster to a public facility and to defray certain expenses resulting from the disaster. The DHS should be able to accomplish this task given existing resources.

The bill appropriates from public safety fees \$1 M to the DHS to provide regional training for public safety service providers or advanced training programs during FY 2007. Funds appropriated may be allotted by the Budget Agency after review by the Budget Committee.

The bill appropriates from public safety fees in excess of \$1 M, \$1 M to the DHS to be used at the discretion of the DHS director for deposit in the state Disaster Relief Fund or to defray the costs of response, recovery, or the 25% costs required to be paid by local jurisdictions for federal disaster relief. The funds are appropriated during FY 2007. Funds appropriated may be allotted by the Budget Agency after review by the Budget Committee.

Penalty Provisions: A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. Juvenile violators would be subject to the juvenile delinquency law. The average expenditure to house an adult offender was \$20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$62,292. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Registration Fee:* The bill sets an annual registration fee of \$1,000 for the first location, \$200 for each additional sales location in a structure, and \$500 for each additional sales location in a tent from which consumer fireworks are offered for sale. The amount of revenue that will be generated by the provision is indeterminable. Fees collected must be collected by the State Fire Marshal and deposited in the Fire and Building Services Fund.

Public Safety Fee: A user fee is imposed upon the sale of consumer fireworks. The fee becomes effective on June 1, 2006. Assuming that this fee is administered similar to the state Sales Tax, collections from the fee will not be remitted until July 2006. Therefore, the estimated fee revenue that will be deposited in the state General Fund is approximately \$3.1 M in FY 2007 and \$3.3 M in FY 2008.

The fee is paid to the retailer who remits the fee to the DOR, and is required to be deposited in the state General Fund. The fee is measured by the gross retail income received by a retailer in a retail unitary transaction of consumer fireworks and is imposed at the following rates.

Public Safety Fee	Gross Retail Income from the Retail Unitary Transaction
\$0.00	Less than \$0.10
\$0.01	At least \$0.10 but less than \$0.30
\$0.02	At least \$0.30 but less than \$0.50
\$0.03	At least \$0.50 but less than \$0.70
\$0.04	At least \$0.70 but less than \$0.90
\$0.05	At least \$0.90 but less than \$1.10

Penalty Provisions: If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. Revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is \$500, which is deposited in the state General Fund. The maximum fine for a Class C misdemeanor is \$500. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class D felony or a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Penalty Provisions:* A Class C misdemeanor is punishable by up to 60 days in jail. A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provisions:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee, or 27% of the \$120 court fee, that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Fire and Building Safety; DOR; Legislative Council; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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